

LAW OFFICES OF EVERETT L. DELANO III

220 W. Grand Avenue
Escondido, California 92025
(760) 510-1562
(760) 510-1565 (fax)

October 15, 2001

VIA FACSIMILE & U.S. MAIL

Michael Holzmiller, Director of Planning
Don Neu, Senior Planner
City of Carlsbad Planning Department
1635 Faraday Ave.
Carlsbad, CA 92008

Re: City Council Consideration of Villages of La Costa Project

Dear Messrs. Holzmiller and Neu:

This letter is submitted on behalf of Canyons Network, the Sierra Club, the Center for Biological Diversity, and the San Diego BayKeeper to provide comments concerning the proposed Villages of La Costa development project ("Project"). These comments are intended to supplement prior comments concerning the Project and the Final Environmental Impact Report ("FEIR"). Numerous comments to the FEIR have shown it to be inadequate in several respects; the City's responses fail to resolve the FEIR's inadequacies.

Insufficient Water Supply

Last Tuesday (October 9, 2001) Governor Davis signed into law two bills (SB 221 and 610) that require proof of an adequate water supply prior to approving housing projects greater than 500 homes. Among other things, water agencies must provide written verification, based upon substantial evidence, of an adequate water supply, and provide an adequate water supply assessment (a copy of a newspaper article concerning the new laws is attached for your convenience). A water supply assessment must include an identification of water supply entitlements, water rights, or water service contracts relevant to the identified water supply for the proposed project and water received in prior years pursuant to those entitlements, rights, and contracts.

The Project and the FEIR fail to make the demonstrations intended by these laws. Indeed, an adequate water supply is not assured, particularly in light of the numerous other development projects proposed and planned for the area, *see* FEIR at Table 5-2, as well as the area's existing water supply problems. The Project lies within the jurisdiction of three different water agencies. FEIR at Figure 4.12-4. Yet the FEIR's minimal analysis of the existing water supply condition and of the Project's impacts on water supply fails to provide the information necessary to ensure compliance with these requirements. *See* FEIR at 4.12-31 to 38. Furthermore, the FEIR's conclusion that the

Project's impacts to water supply will not be significant is not supported by substantial evidence.

Inadequate Biological Information

Several commenters noted that biological surveys for many species were outdated or non-existent, yet the City responded by pointing only to 1999 surveys for the Quino Checkerspot butterfly. *See e.g.*, FEIR Response to Comment # 464 and the additional responses cited therein. The fact that surveys were conducted for one species, and that those surveyors may have had experience or knowledge about other species, does not suffice to address the FEIR's failures to provide adequate and complete information about the existing environmental conditions for several species, including the California gnatcatcher, Burrowing owl, Cooper's hawk, Northern harrier, White tailed kite, and Loggerhead shrike.

Unsafe Traffic Conditions

FEIR Response to Comment # 384 states that the City need not consider cars traveling along Cadencia Street near a children's park in excess of 50 mph because "[s]peeding is not a physical change to the environment." This viewpoint is shortsighted and incorrect. CEQA requires a consideration of a social change where it is related to a physical change. CEQA Guidelines § 15382. While the fact of cars speeding in and of itself may not be a physical change to the environment, the Project's addition of cars to a street that is already unsafe for children and others is a significant effect on the existing environment. As such, it should have been analyzed in the FEIR.

Additionally, the Project's impacts on existing unsafe conditions on Cadencia Street poses an inconsistency with the City's land use plans, including its General Plan and Circulation Element. *See e.g.*, City Circulation Element A.4 ("A City with ... safe traffic control systems"), C.8 ("Maintain a Traffic Safety Commission ... for the purpose of studying matters of traffic and pedestrian safety and making recommendations."), & C.9 ("Employ improved traffic control devices ... to increase pedestrian and bicyclist safety").

Conclusion

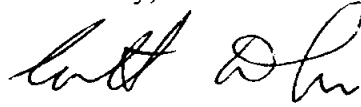
A recent two-day workshop held by the Pew Oceans Commission noted that urban sprawl is threatening the nation's coasts and marine habitats (a copy of an article concerning the workshop is attached for your convenience). If approved, this Project will exacerbate these problems.

Canyons Network, the Sierra Club, the Center for Biological Diversity, and the San Diego BayKeeper hereby express their opposition to the Project, and request that the City Council disapprove the Project, withdraw the FEIR, and pursue environmentally superior alternatives.

Messrs. Holzmilller & Neu
October 15, 2001
Page 3 of 3

I respectfully request that you provide copies of this letter to all City Council members prior to tomorrow night's hearing. Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in cursive script, appearing to read "Everett DeLano".

Everett DeLano, Esq.

Enclosures

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New law links water supply to OK of large housing tracts

Published Wednesday, Oct. 10, 2001, in the San Jose Mercury News
BY TRACEY KAPLAN

Mercury News

In an attempt to better manage California's growth, Gov. Gray Davis signed a bill Tuesday that prevents local officials from approving large housing tracts unless there is proof of an adequate water supply, even during a severe drought.

Previous laws required developers only to disclose whether they had enough water and allowed them to build even if there wasn't.

Proponents, including environmentalists, have been trying to pass similar legislation since the early 1990s. The bill's author, Sen. Sheila Kuehl, D-Los Angeles, said the energy crisis helped move the issue to the top of the agenda.

"Suddenly, it became clear to us that there may be other things we took for granted," Kuehl said. "It was even worse with water because we can't simply build a new plant and manufacture water like electricity."

The bill is expected to have the greatest initial impact on arid Southern California and the Central Valley, including land on the Bay Area's eastern flank. California's population is projected to grow from about 34 million to about 58 million in the next 40 years, a 70 percent increase. That's the same number of people who now live in the nation's 11 largest cities: New York, Los Angeles, Chicago, Houston, Philadelphia, Phoenix, San Diego, Dallas, San Antonio, Detroit and San Jose.

The policy shift, which links water supply to growth for the first time, comes as the state faces shrinking water resources and a looming drought. It also follows recent court decisions that have struck down approval of new housing developments when there were no assurances of water.

The law applies only to housing tracts of 500 units or more. Low-income housing projects and housing tracts surrounded by urban development are exempt. And while the bill doesn't prevent development, it does require developers to help find and pay for new water sources.

In his signing message, Davis said that while these bills are an important step, more needs to be done to address the need for additional supplies and improved infrastructure.

The building industry initially opposed the bill, but backed off after Kuehl removed a provision that would have forced developers to prove their legal right to groundwater.

The bill was opposed by the Association of California Water Agencies, whose members will have to

provide written verification that there's enough water. Spokesman Bob Reeb said the new law will leave water districts vulnerable to lawsuits aimed at stopping development. Reeb also said some developers will sidestep the requirements.

"If the water supply is in any doubt at all, you'll see 499-unit proposals," Reeb said.

The governor also signed SB 610, which closes loopholes that have allowed large-scale development projects to evade existing water supply assessment requirements.

Contact Tracey Kaplan at tkaplan@sjmercury.com or (408) 278-3482.

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<http://www.latimes.com/news/science/la-000079366oct04.story?coll=la%2Dnews%2Dscience>

THE NATION

Urban Sprawl Threatens the Coasts, Panel Told

Environment: Results include habitat damage and pollution, experts warn. They urge limits on growth.

From Associated Press

October 4 2001

PORTLAND, Ore. -- Urban growth and sprawl are threatening both the East and West coasts, along with waste runoff from watersheds that need better management, members of a national commission were told Wednesday.

A two-day workshop for environmentalists and coastal management experts concluded with a broad range of recommendations to improve coastal planning, limit growth and protect the marine ecosystem.

The workshop began with a dire prediction about the future of coastal areas, which are home to nearly two-thirds of the U.S. population. "In most places, the rate of land conversion is growing five times faster than the population growth," said Jane Lubchenco, an Oregon State University marine biologist.

"In other words, for every additional person, there is a fivefold increase in the land utilized. If you do the numbers, people are horrified."

The growth in coastal states shows no signs of slowing, added David Conrad of the National Wildlife Federation.

The result is coastal pollution and marine habitat damage, which the Pew Oceans Commission is hoping to find ways to limit and possibly even reverse.

The commission was formed last year with a \$4.5-million grant from the Pew Charitable Trusts. Its 19 members include Lubchenco, Gov. Tony Knowles of Alaska and Gov. George Pataki of New York.

The Pew Oceans Commission is headed by former Clinton White House Chief of Staff Leon E. Panetta, who expects the panel to report next fall on coastal issues that include marine pollution, urban development, fishing, aquaculture and climate change.

The full commission plans to meet next month in New York to begin drafting formal recommendations to present to Congress next year.

Lubchenco met with fellow commissioners Pietro Parravano, a commercial fisherman, and Julie Packard, founder and executive director of the Monterey Bay Aquarium, to talk about preserving the

remaining natural coastal habitat.

They heard a number of suggestions, including a recommendation that coastal states buy up farmland near the ocean to restore it to its natural state.

"When the agricultural economy is weak, as it is now, that's when opportunities exist," said Sara Vickerman, director of the West Coast office for Defenders of Wildlife.

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October 16, 2001

VIA FACSIMILE & U.S. MAIL

Michael Holzmillner, Director of Planning
Don Neu, Senior Planner
City of Carlsbad Planning Department
1635 Faraday Ave.
Carlsbad, CA 92008

Re: City Council Consideration of Villages of La Costa Project

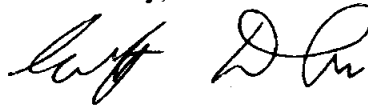
Dear Messrs. Holzmillner and Neu:

Today I received a letter from Robb Hamilton, a biologist who commented previously on the Environmental Impact Report ("EIR") for the Villages of La Costa development project ("Project"). Mr. Hamilton discusses some of the City's responses to comments made on the Draft EIR. A copy of Mr. Hamilton's letter is enclosed with this letter and hereby incorporated by reference.

In essence, Mr. Hamilton's letter confirms that the City's responses failed to address the EIR's critical failures.

I respectfully request that you provide copies of this letter to all City Council members prior to tonight's hearing. Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Everett DeLano', written in a cursive style.

Everett DeLano, Esq.

Enclosure



ROBERT A. HAMILTON

October 11, 2001

Everett DeLano III
Attorney at Law
220 W. Grand Avenue
Escondido, California 92025

SUBJECT: RESPONSES TO COMMENTS, DEIR SCH No. 1999011023
VILLAGES OF LA COSTA MASTER PLAN (2000)

Dear Everett:

This letter replies to the response to comments on DEIR SCH No. 1999011023 for the Villages of La Costa Master Plan (VLMP) project, prepared for the City of Carlsbad (the City).

Response No. 232 confirms the thrust of the comment, namely that the City considers all significant biological impacts associated with the Villages of La Costa project to be "pre-mitigated" through existence of the Carlsbad-FLCA HCP/OSMP. The HCP/OSMP is a massive and complicated document with far-reaching land-use implications that was never subjected to meaningful public scrutiny through preparation of an EIR, or even a Negative Declaration. The 1995 Notice of Declaration prepared for the HCP/OSMP, which the City now relies upon as the answer to all CEQA-related issues regarding the VLMP project, is clearly too perfunctory for such heavy work.

Numerous comments from many individuals identify important deficiencies in project planning and impact analysis. These deficiencies are so great that they must also have been apparent to those preparing this EIR, and those who must eventually decide whether to certify it. It is therefore unsurprising that the EIR highlights incremental increases in open space above levels identified in the Carlsbad-FLCA HCP/OSMP, as well as payments made by the project proponent that contribute to California Gnatcatcher research and the purchase of off-site parcels. But the EIR also takes pains to emphasize that these are entirely "voluntary" actions because all significant biological impacts were mitigated to below a level of significance through existence of the HCP/OSMP. The City's steadfast refusal to assess the VLMP project on its own merits -- that is, without referring all questions of impact significance back to the 1995 Notice of Declaration -- is clearly hindering meaningful public review of the current EIR.

Response No. 235 is non-responsive to the comment. Information from the San Diego Bird Atlas project is relevant to the planning of this project and should be incorporated into this EIR's analysis of local and regional project effects on sensitive bird populations.

Response No. 235 also identifies the preservation of "potential habitat" for Orcutt's Brodiaea as fully mitigating the project's acknowledged impacts to this species. Since the biological benefits of this approach are clearly speculative, the City must acknowledge that potentially significant impacts will remain after mitigation.

Response No. 239 acknowledges that "appropriate locations for restoration using these species are limited on-site." Notably, this response does not state that such locations are non-existent, or that appropriate locations do not exist off-site. As with all other questions of CEQA compliance, the EIR asserts that all significant impacts have been pre-mitigated through the existence of the HCP/OSMP, thereby negating the public's ability to improve this project through review of the VLMP EIR.

Response No. 240 presents no valid reason why sensitive plant species impacted by this project should not be incorporated into project planting areas adjacent to preserved natural open spaces.

Response No. 242 is non-responsive to the comment. The exclusive planting of locally native plant species in areas adjacent to natural open spaces, including fuel modification zones, would help to mitigate this project's significant fuel modification and grading impacts to the maximum extent feasible.

Response No. 246 repeats two of the EIR's most questionable propositions: (1) that the two off-site mitigation parcels discussed in the EIR's mitigation section are "not required to mitigate Proposed Project impacts to below a level of significance," and (2) that the project proponent donated \$1,000,000 toward their purchase on a purely voluntary basis. Regardless of whether one possesses the credulity to accept these assertions at face value, no logical reason is presented for withholding the requested maps and analyses of the off-site parcels.

Response No. 253 is a red herring intended to distract attention from the point of my comment. It is irrelevant that biologists have conducted general surveys, and focused surveys for other species, on the project site over a number of years. My comment noted that focused Burrowing Owl surveys are required in order to reliably assess the status of Burrowing Owls on a given project site. It is for this reason that the California Burrowing Owl Consortium developed a widely accepted protocol comprised of searches for potentially suitable burrows, searches for disgorged pellets, and directed owl surveys during dawn and dusk activity peaks during different seasons. Such surveys are routinely required by CEQA lead agencies and the resource agencies, and are the only widely accepted methods for establishing the Burrowing Owl's status on a given site. Given the large area of grasslands that would be impacted by this project, such surveys are required to substantiate a finding that the project will not adversely affect this species.

Comment No. 264 discussed in some detail how Burrowing Owls have been virtually extirpated from San Diego and Orange counties as a direct result of massive and cumulatively significant grassland losses. Response No. 264 reiterates my point by noting that, in preparing the draft HMP and Draft MHCP, "Priorities were placed on preservation of Diegan coastal sage scrub and southern maritime chaparral." Then, ignoring the facts contained in my comment, this response asserts that "the amount of grassland preserved within the regional context was considered adequate for sensitive species occurring within grasslands." The VLMP project, as proposed, would remove 88% of the site's grasslands, and there is no credible basis for claiming that the small grassland areas preserved are adequate to reduce this project's grassland impacts to below a level of significance.

Response No. 259 fails to provide the requested planting palettes for public review.

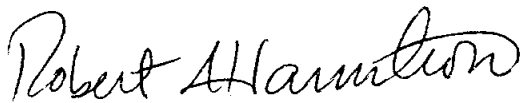
Response No. 260 is somewhat evasive on the question of whether adequate natural water exists to support riparian woodlands without ongoing irrigation, and vaguely acknowledges that "some supplemental irrigation may be necessary." Provision of a hydrologist's report affirming the suitability of the proposed riparian mitigation sites would have been more informative, appropriate, and responsive.

Response Nos. 261 and 262 ignore my comment that the word "initiation" is undefined. Again, it is entirely possible that the applicant could simply start collecting seed or do some other very preliminary step and claim to have "initiated" mitigation, thereby greatly reducing the mitigation requirement.

Response No. 275 confirms that CEQA review of the VLMP project has been severely compromised by previous "deals" made with the resource agencies during preparation of the Carlsbad-FLCA HCP/OSMP. As detailed herein, the existence of a 1995 Notice of Declaration for the HCP/OSMP does not ensure that all significant impacts associated with the VLMP project have been reduced to below a level of significance. Moreover, the project proponent's "voluntary" mitigation efforts (i.e., those that exceed the requirements of the HCP/OSMP) do not obviate the City's requirement to provide for meaningful public review of this project as outlined in CEQA and its Guidelines, and as repeatedly affirmed in California case law.

I appreciate the opportunity to review the City's responses to my comments, and look forward to continued participation in public review of this interesting project.

Sincerely,

A handwritten signature in black ink that reads "Robert A. Hamilton". The signature is written in a cursive, flowing style.

Robert A. Hamilton
Consulting Biologist

LAW OFFICES OF EVERETT L. DELANO III

220 W. Grand Avenue
Escondido, California 92025
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October 22, 2001

VIA FACSIMILE & U.S. MAIL

Michael Holzmilller, Director of Planning
Don Neu, Senior Planner
City of Carlsbad Planning Department
1635 Faraday Ave.
Carlsbad, CA 92008

Re: City Council Consideration of Villages of La Costa Project

Dear Messrs. Holzmilller and Neu:

This letter is submitted on behalf of Canyons Network, the Sierra Club, the Center for Biological Diversity, and the San Diego BayKeeper to provide comments concerning the proposed Villages of La Costa development project ("Project").

During last Tuesday's City Council hearing, it became abundantly clear that many members of the public, and possibly some City Council members, were of the impression that the choice before the City involves a battle between housing and the environment. This is a false choice and one we hope the City Council will reject. In commenting on the Project's Draft Environmental Impact Report ("EIR"), the above groups noted (among other things) that the City had failed to analyze and discuss an alternative that would provide for greater protection of the unique resources on the Project site. The EIR should have, but failed to, analyze a "Park" or similar alternative that would provide the best possible protection for this location. Regional examples of such an alternative include Daley Ranch in Escondido and Peñaquitos Canyon in the City of San Diego.

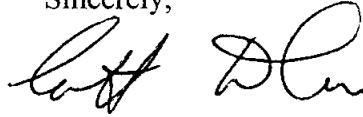
Yet pursuing an alternative that involves less of a footprint on the Project site does not mean that housing opportunities are lost. To the contrary, many good areas for housing remain within the City, and there are many opportunities for redevelopment of areas that currently do not make good use of their existing space. Again, the EIR should analyze and discuss these alternatives and provide a sound basis for a decision about the best locations, and the best mechanisms, for achieving the best balance between housing and the environment.

We hope the City Council will give these issues the consideration they deserve. Other than serving to support the Projects proponent's arguments for this particular development, there is no useful purpose served by placing the two interests (housing and the environment) at odds.

Messrs. Holzmilller & Neu
October 22, 2001
Page 2 of 2

I respectfully request that you provide copies of this letter to all City Council members prior to tomorrow night's hearing. Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Everett DeLano", written in a cursive style.

Everett DeLano, Esq.

STATE REGIONAL WATER QUALITY
CONTROL BOARD

1999 DEC 31 A 11:45

3174 Camino Arroyo
Carlsbad, CA 92009
December 30, 1999

Stacy Baczkowski, Staff Assistant
State Regional Water Quality Control Board
9771 Clairemont Mesa Blvd., Ste. B
San Diego, CA 92124

Dear Ms. Baczkowski :

Please add the following to the public record on the Villages of La Costa Project's application for a "401" permit, pending now before your agency.

(1) This proposed project is of sufficient magnitude to require a California EIR. 1,867 acres, the impacted area, is a significant percentage of Carlsbad as a whole, and is a more than significant percentage of the natural open space remaining in Carlsbad. Development of these acres would irrevocably alter the character of Carlsbad, and the quality of life for its citizens.

The 1,867 acres involved constitute what the City of Carlsbad, in its recently-approved Habitat Management Plan, describes as "the largest, least fragmented, biological core area in the City." The HMP also refers to this area as "some of the highest quality coastal sage scrub in the City." Any development of a significant portion of this high-quality acreage should be subjected to the level of analysis, *and the public input*, required by an EIR.


The Villages of La Costa Project is highly controversial. In July, 1999, more than 150 Carlsbad residents attended a very lightly-advertised public scoping meeting on the "Villages" project, and several objected strenuously to the project, describing its many adverse impacts. Many letters to the editor of the *North County Times* have protested this planned development. If I am not mistaken, California law requires that an EIR be prepared for any project that is substantially controversial.

(2) The extensive grading planned within the watershed of San Marcos Creek, (the plan calls for 11,800,000 cubic yards to be moved), followed by the establishment of the roofs of 1200 houses and the paving of streets and driveways within the project, will directly affect the water quality of Batiquitos Lagoon and the nearby Pacific Ocean beaches and waters. Stormwater runoff will be substantially increased, causing the potential for flooding in the lowlying La Costa Resort area and the pollution of Batiquitos Lagoon and the adjacent beaches. During the El Niño storms of 1997-98, Batiquitos Lagoon was polluted several times, and its waters declared off-limits. This was with the naturally absorbent landscape intact. Because of the impacts on lagoon and beach, I believe the California Coastal Commission should be involved in the permitting of this project. Streambed alteration shouldn't be allowed without the approval of the CCC.

(3) The proposed mitigation for the project is inadequate. The mitigation sites consist of isolated fragments. I have visited them, inventorying their resources informally and noting their emplacement within developed areas. As isolated fragments, they cannot provide the biological sustainability of a larger, one-piece, intact environment such as that contemplated as the site for the "Ridge" and "Oaks" sections of the "Villages of La Costa" proposal. To repeat, the land to be graded and thereby essentially destroyed as a biological entity is, according to Carlsbad's official report, "the largest, least fragmented, biological core area in the City." It would be a sizable and irrevocable action to transform this rare piece of land and open space. There is no realistic mitigation for the loss of this land.

(4) The driving force behind this project, of course, is money. The developer wants money for the usual reasons, and the City of Carlsbad wants money (to be provided by the developer) to relocate and widen Rancho Santa Fe Road. On the other side there are the values of open space and biological diversity, which are essentially quality-of-life issues. It is difficult to translate these values into the language of the bottom line. Typically, they do not receive fair consideration. I believe the present case is a good opportunity for the State Regional Water Quality Board to stand for what is biologically right.

Sincerely yours,


Thomas J. Lyon
Professor Emeritus
Utah State University

State Regional Water Quality Control Board
Stacy Baczkowski, Staff Assistant
9771 Clairemont Mesa Blvd., Ste B
San Diego, CA

January 4, 2000

Dear Ms. Baczkowski

I request a public hearing be held on the Villages of La Costa Master Plan and that an Environmental Impact Study and an Environmental Impact Report as required by State and Federal Agencies be conducted on the largest and most valuable piece of coastal sage scrub left in Carlsbad. On behalf of my neighbors in the La Costa area, most of whom have been occupied by the holiday season and are unaware that you are planning to turn their community upside down without even their knowledge, I beg you to consider the Impropriety of taking such an irrevocable step with so little public knowledge. Having lived in the area for the last ten years I know that La Costa residents for the most part are against the desecration of this canyon with its gorgeous 40 foot waterfall, and its unbeatable combination of rare plant, bird and animal species. Those citizens proved that when they appeared in droves at the meeting held by the Planning Commission last June.

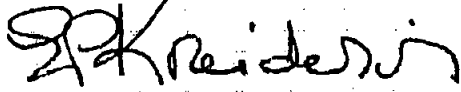
After the unfortunate fire three years ago the canyon has blossomed in an unbelievable fashion making it even more spectacular than it was before. San Marcos Creek, with the kind of development planned, and which you can see happening now by the same builder at La Costa Valley, cannot help but be affected by the massive reconfiguration of the land with enormous airport building equipment that was invented to build airstrips in World War II. The runoff from roads and driveways all leaching their deadly poisons downhill will almost certainly pollute the Creek as well as Batiquitos Lagoon as the City of Carlsbad hasn't bothered yet to change their building regulations so that road and driveway oils don't end up in the storm drains.

I am not at all against development per se, just this kind of mindless scraping and gouging that is presently taking place where the character of land that is being developed is so compromised that it downgrades the whole area, including San Marcos Creek and makes living nearby a hardship on us all. We came here to enjoy the peace and beauty of the canyons and to live in harmony with our natural surroundings.

In addition I would like to point out the necessity for an underpass for animals if and when Rancho Santa Fe Road is moved. It needs to be wide enough and high enough to accommodate animals as large as deer and bobcats. To maintain a proper balance

of nature so that the area retains its integrity and viability it is necessary to have the animals cross back and forth safely, otherwise the road kill will continue unabated, and the area will become just another sterile green pocket of which Carlsbad already has far too many.

Sincerely,

A handwritten signature in dark ink, appearing to read 'E. Kruidenier', written in a cursive style.

Elizabeth P. Kruidenier
3005 Cadencia Street
Carlsbad, CA 92009

838 571.6972

FROM 760 436 8596

MEMO

To: Stacy Baczkowski

From: Inez Yoder, Canyons Network

Date: Dec. 21, 1999

VILLAGES OF LA COSTA

Re: CESPL-9820605400-2TCD (US Corps of Engineers0 "Villages of La Costa"
Carlsbad Project

Canyons Network (520 interested citizens) is working to reverse the urban sprawl (including reversing the trend to degrade waterways). The 1200 acres designated in a developer's plan as "Ridge/Oaks" was evaluated in the April, 1999 Federal Register as a vital coastal sage scrub core area for the North County Multi Species Habitat Plan.

The 1200 acres includes a 500 - 600 acre habitat Conservation Plan dated 1995. The proposal for grading is 11,800,000 cubic yards to be moved on the remaining acreage.

There are two parcels outside the city limits on County land intended as "mitigation" for the impacts proposed. They in no way represent the habitat value to be lost.

This land should be left untouched, protecting San Marcos Creek from the runoff the disturbed 11,800,000 will make available for siltation. Please deny the Corp Permit.

3174 Camino Arroyo
Carlsbad, CA 92009
December 13, 1999

U.S. Army Corps of Engineers, Los Angeles District
Regulatory Branch--San Diego Field Office
ATTN: CESPL-9920605400-2TCD
9808 Scranton Road, Suite 430
San Diego, CA 92121

U.S. Army Corps of Engineers:

Please add the following to the public record on the Villages of La Costa Project's application for permit, pending now before your agency.

I have four comments:

(1) The Corps of Engineers states, "A preliminary determination has been made that an environmental impact statement is not required for the proposed work." (p. 3, Public Notice)

I protest this determination on the following grounds: (a) The Project is of sufficient magnitude to require an EIS. 1,867 acres is a significant percentage of Carlsbad as a whole, and is a more than significant percentage of the natural open space remaining in Carlsbad. Development of these acres would irrevocably alter the character of Carlsbad, and the quality of life for its citizens. (b) The 1,867 acres involved constitute what the City of Carlsbad, in its recently-approved Habitat Management Plan, describes as "the largest, least fragmented, biological core area in the City." The HMP also refers to this area as "some of the highest quality coastal sage scrub in the City." Any development of a significant portion of this high-quality acreage should be subjected to the level of analysis, *and the public input*, required by an EIS. (c) The Villages of La Costa Project is highly controversial. In July, 1999, more than 150 Carlsbad

residents attended a very lightly-advertised public scoping meeting on the "Villages" project, and several objected strenuously to the project, describing its many adverse impacts. Many letters to the editor of the *North County Times* have protested this planned development. The National Environmental Policy Act of 1970 requires that an EIS be prepared for any project that is substantially controversial.

(2) The Public Notice states, "The project is located outside the coastal zone and will not affect coastal zone resources." (p. 4, Public Notice)

This statement is incorrect. The extensive grading planned within the watershed of San Marcos Creek, followed by the establishment of the roofs of 1200 houses and the paving of streets and driveways within the project, will directly affect the water quality of Batiquitos Lagoon and the nearby Pacific Ocean beaches and waters. Stormwater runoff will be substantially increased, causing the potential for flooding in the lowlying La Costa Resort area and the pollution of Batiquitos Lagoon and the adjacent beaches. During the El Niño storms of 1997-98, Batiquitos Lagoon was polluted several times, and its waters declared off-limits. This was with the naturally absorbent landscape intact. It is incorrect to state that coastal-zone resources will be unaffected by this proposed project. This is a second reason for a full-scale EIS, one that includes study of the likely effects upon the coastal zone.

(3) The proposed mitigation for the project, described on pp. 9-10 of the Public Notice, is inadequate. The mitigation sites consist of isolated fragments. I have visited them, inventorying their resources informally and noting their emplacement within developed areas. As isolated fragments, they cannot provide the biological sustainability of a larger, one-piece, intact environment such as that contemplated as the site for the "Ridge" and "Oaks" sections of this proposal. To repeat, the land to be graded and thereby essentially destroyed as a biological entity is, according to Carlsbad's official report, "the largest, least fragmented, biological core area in the City." It would be a sizable and irrevocable action to transform this rare piece of land and open space. There is no realistic mitigation for the loss of this land.

(4) The driving force behind this project, of course, is money. The developer wants money for the usual reasons, and the City of Carlsbad wants money (to be provided by the developer) to relocate and widen Rancho Santa Fe Road. On the other side there are the values of open space and biological diversity, which are

essentially quality-of-life issues. It is difficult to translate these values into the language of the bottom line. Typically, they do not receive fair consideration. I believe the present case is a good opportunity for the Army Corps of Engineers to stand for what is biologically right.

The Corps should select Alternative 5, the No Build Alternative. At the very least, the Corps should require that a full-scale Environmental Impact Statement be prepared, an EIS that takes into account impacts on the coastal zone and includes a full treatment of the economic and social issues involved. This is too big a project to be slipped by with only an Environmental Assessment.

Sincerely yours,

Thomas J. Lyon
Professor Emeritus
Utah State University

FAX (619) 674-5388

7304 Borla Place
Carlsbad, CA 92009

December 17, 1999

US Army Corps of Engineers, Los Angeles District
Regulatory Branch -- San Diego Office
Attn.: CESPL-9920605400-27CD
9808 Scranton Road, Suite 430
San Diego, CA 92123

US Army Corps of Engineers:

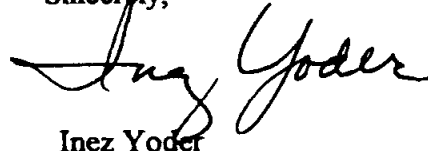
Re: Public Comment on Application for Villages of La Coast in Carlsbad, CA

Several years ago an officer of the Corps spoke to a group of Wetland Scientists. He assured us that the Corps henceforth would be guarding against the degradation their previous policies had allowed. The passage of the Nationwide Wetland Permit regulation may have changed all that. But the need for the Corps serious consideration for the degradation of U S lands is greater than ever.

The proposal for 1800+ acres of prime coastal sage scrub habitat buffering a creek exiting to the ocean through Batiquitos Lagoon requires an EIS. Runoff to Batiquitos Lagoon is a major concern. Scraping those acres for 1200+ homes and the attendant runoff from streets, driveways and roofs should not be glossed over. Analysis of the impacts to the \$55,000,000 dredged Batiquitos Lagoon must be presented and reviewed.

In the Federal Register of April, 1999 the US Fish and Wildlife Service characterized the property in question as "the largest blocks of natural vegetation...of southeast Carlsbad and southwestern San Marcos." We are told by science experts that fragmentation of natural habitat areas is the greatest enemy of preservation of biological diversity. Introducing fragmentation into the very area the USFWS has declared the most valuable natural habitat in North San Diego County should have, at minimum, an EIS.

Sincerely,



Inez Yoder



SIERRA CLUB, SAN DIEGO CHAPTER
San Diego and Imperial Counties
3820 Ray Street
San Diego, CA 92104-3623

Office (619) 299-1743
Conservation (619) 299-1741
Fax (619) 299-1742
Voice Mail (619) 299-1744
EBBS (619) 299-4018

December 21, 1999

Project Manager: Terry Dean
US Army Corps of Engineers, Los Angeles Division
Regulatory Branch - San Diego Office
Attn: CESPL 9920605400-2TCD
9808 Scranton Rd., Suite 430
San Diego, CA 92121

Re: Notice /Application No.: 992005400-TCD
(The: Oaks/Ridge, & Greens Development Proposals)

Dear Terry Dean:

The Sierra Club is a non-profit environmental organization working to protect wild places, biodiversity, air and water quality, and quality of life in our communities.

We disagree with the determination that an Environmental Impact Statement (EIS) is not required for the project.

The subject project involves impacts (*discharge of dredged or fill material*), to waters of the U.S.. Specifically the project proposes impacts to at least 7.48 acres of wetlands.

Section 404 B(1), from "CWIS 40 CFR Part 230 Section 404 B(1) Guidelines" states:

A. Except as provided under section 404(b)(2), no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.

For the above referenced project:

1) An Environmental Impact Statement (EIS) is necessary to evaluate any impacts of the project to existing wildlife corridors.

The proposed project impacts one of the largest blocks of natural habitat that occurs in San Diego North County. Habitat corridors in North County are already extremely fragmented. Connectivity of habitats, and wildlife corridors are critically important toward maintaining biodiversity.

2) An EIS is needed to determine potential impacts to any State and Federally listed threatened or endangered species.

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December 21, 1999

Sierra Club Comments

Re: Notice /Application No.: 992005400-TCD

3) An EIS is needed to evaluate alternatives that avoid wetland impacts and impacts to wetland habitats including vernal pools.

- a. An EIS must include a full hydrological analysis for alteration of the existing watershed and potential impacts to wetland, vernal pool, and other habitats from changes to natural drainages and increases or decreases in velocity of runoff. Mitigation measures should be required to prevent runoff impacts such as sediment deposits, and erosion, and these measures should be evaluated. These mitigation proposals should be included in an EIS study and evaluated for effectiveness and adequacy.
- b. As the Oaks/Ridge project proposes impacts 1,960 square feet of vernal pool habitat an alternatives study is required to avoid these pools. We have less than 5% of our natural vernal pool habitats remaining. A project alternative is required that avoids the pools and the watershed areas that are needed to maintain the viability of the pools for the endangered species that depend upon them.
- c. An EIS is needed to evaluate adequacy of mitigation of any impacts to wetlands and other endangered habitats that cannot be avoided. The only impacts to wetlands that should be considered as possibly "unavoidable" are impacts associated with essential public service utilities. In such cases the alternatives analysis should demonstrate that the impact is unavoidable, is minimized, and is mitigated to a net benefit of each wetland habitat type, and mitigated within the vicinity of the impact. For example, a road would cross the stream (as opposed to following the stream), at the least damaging location, and would cross the stream on a bridge and not on fill. (Fill disrupts natural drainage, increases back-flooding and downstream flooding, and cuts off important wildlife corridors).
- d. A hydrology analysis is needed to determine the potential existence of vernal pools, which may remain dormant for years in the absence of adequate rainfall.
- e. An EIS is needed to determine the appropriate wetland delineation. Any wetland delineation must consider regional precipitation cycles and the unique wetland types of our semi-arid climate, and as such, should be considered a protected wetland with the presence of wetland vegetation, or, wetland hydrology, or wetland soils. (See San Diego County Resource Protection Ordinance).

WATER QUALITY: Any project alternative should prevent any impact to water quality in all waterways from creeks and streams to the estuaries, and coastal waters. This includes, but is not limited to, any runoff associated with watering of landscaping that would result from the project, or other uses of water within the project area that would result in runoff to waters of the U.S..

****** IMPACTS TO WETLANDS SHOULD NOT BE PERMITTED ******

Our region has lost approximately 90% of our original wetlands. Consider the enormous value of wetlands and consider that they make up less than 0.5% of our landmass!

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Sierra Club Comments
Re: Notice /Application No.: 992005400-TCD

December 21, 1999

The MULTI-FOLD VALUES OF WETLANDS

WATER QUALITY: Wetlands are natural filters of nutrients and pathogens found in urban runoff and are capable of improving water quality before flowing downstream to larger water bodies. Wetland soils can break down organic contaminants and compounds into harmless components.

WATER RESOURCE: Wetlands help to slow flood waters, reducing erosion and allowing pollutant carrying sediment particles to settle out. Therefore, they serve to protect our local municipal water resources. Wetland and wetland buffers are important groundwater recharge areas.

COMMUNITY VALUES, (FLOOD CONTROL & RECREATION)

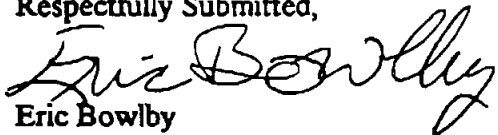
- a.) Loss of natural wetlands result in increased flood damages.
- b.) Wetland areas are ideal for passive recreation, open space views, hiking and bird watching.

HABITAT VALUES: a. Half of all endangered and threatened species depend upon wetlands for habitat. b. Creeks, streams, and rivers are important wildlife corridors allowing for movement of animals throughout the watershed. c. 75% of all commercial and sport fish depend upon wetlands at some point during their life cycle.

As the wetlands and their buffers are critically important resources, including the habitat values for many endangered species, it is incumbent upon the Corps to steer development out of wetland areas and waters of the U.S.. This is especially true in cases where the project is not dependant upon the water resource and can easily be constructed in a more appropriate location.

On behalf of our Sierra Club Chapter and our 14,000 members I would like to thank you for considering our comments and requiring an EIS for the project.

Respectfully Submitted,



Eric Bowlby
CO-Chair, Coastal Committee,
Executive Committee Chairperson,
Sierra Club, San Diego Chapter

c.c.

Project Manager: Ms. Tamara Spear
California Department of Fish & Game

Ms. Stacy Baczkowski,
California Regional Water Quality Control Board

Jan. 7, 2000

State Reg Quality Control Board

To: Stacy Baczkowski, staff assistant
9771 Clairemont Mesa Blvd. Suite B
San Diego CA
Phone: 858-637-5594
Fax: 858-571-6972

4 pages including this one

From: Pat Bleha
Canyons Network

Re: Proposed Development in the Oaks/Ridge, and Green Development – Villages of La Costa in southeastern Carlsbad – application for a 401 permit

If you are not the appropriate contact at your agency, please forward this to the person who is the contact. Canyons Network, a project of the Sierra Club, is a grass roots group of local residents working to protect the biodiversity, air and water quality, and quality of life in and around the Box Canyon area in southeastern Carlsbad where applications have been made to various federal and state agencies for the above listed proposed development.

Enclosed for your information is our letter of comment on the application made to the Army Corps of Engineers by the proposed developer. – *3 pages*

I would like to be on a notification list for when any review is made by you on this area concerning the 401 permit.

Please send all announcements, reports, or other public communication regarding your input into any applications for this project to me at the following address:

Pat Bleha
3209 Fosca St.
Carlsbad CA 92009

Phone 760-436-5920
e-mail: bleha@aznet.net

Pat C Bleha

Via fax, U.S. Mail and e-mail

Jan. 7, 2000

Project Manager: Terry Dean/Karon Marzec
U.S. Army Corps of Engineers, Los Angeles Div.
Regulatory branch – San Diego Office
Attn: CESPL 992065400-2TCD
FAX: 858-674-5388
16885 W. Bernardo Drive/Suite 300A
San Diego, CA 92127

Re: Notice/Application No.: 992005400-TCD
(The Oaks/Ridge, and Greens Development- Villages of La Costa proposals)

Dear Terry Dean/Karon Marzec:

Canyons Network, a project of the Sierra Club, is a grass roots group working to protect the biodiversity, air and water quality, and quality of life in and around the Box Canyon area in southeastern Carlsbad where an application has been made for the above listed proposed development.

We are requesting a public hearing for the reasons listed below. **We disagree with the determination that an Environmental Impact Statement (EIS) is not required** for the project for the following reasons:

1) The subject project directly impacts (discharge of dredged or fill material), waters of the U.S., specifically the project proposes impacts to at least 7.48 acres of wetlands.

According to EPA guidelines:

A. Except as provided under Sec.404(b)2, no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.

The developer has proposed building 1200 homes environmentally sensitive areas, close to an important waterway for native wildlife and on and around vernal pools which contain endangered species. The developer states in the suggested alternatives that it is not practical to avoid building in these areas because the elimination of some housing "will increase per unit construction cost to beyond what is consistent with lots in the region." What is the basis for the developer's claim? No facts or figures are presented. This region, in the La Costa portion of Carlsbad, contains many upscale custom homes.

2) An EIS is needed to determine potential impacts to any State and Federally listed threatened or endangered species. For example, the San Diego fairy shrimp, an endangered species is mentioned in the application as probably occurring in vernal pools in the project areas. This species is not covered under the Incidental Take Authorization through the HCP/OMSP, and therefore, impacts to this species should be studied in an EIS.

Federal Regulations 40 CFR, Sec. 230.11 require the determination of contaminants and suspended particulates and the nature and degree of effect that the proposed discharges will have both individually and cumulatively on the aquatic ecosystem and organisms, in this case the San Diego fairy shrimp, an endangered species. When the HCP was issued, it wasn't known that 7.48 acres of wetlands would be filled endangering the San Diego fairy shrimp.

Sec. 230.30 and 230.32 also list impacts on threatened and endangered species from the discharge of dredged or fill material which should be considered in making determinations and findings of compliance or non-compliance. These include potential impacts that kill species directly or indirectly by the impairment or destruction of species habitat including the destruction of habitat corridor, breeding grounds, and food and water sources.

3) It is necessary to evaluate any impacts of the project to existing wildlife including their wildlife corridors.

Sec. 230.32 specifically mentions that wildlife associated with aquatic ecosystems are resident transient mammals, birds, reptiles, and amphibians must be considered when studying the effects of the discharge of dredged or fill material. This section also states that the discharge of dredged or fill material can result in the loss or change of breeding and nesting areas, escape cover, travel corridors and preferred food sources. Changes in water levels, contaminants from the discharge of dredged or fill material and the certain change in introduced undesirable plant (home, business, and park landscaping) and animal species (such as pets) at the expense of resident species and communities must be considered.

According to the April, 1999 Federal Register this area is described as being one of the last large parcels of prime quality natural habitat left in Coastal North County. Most habitat corridors in Coastal North County have become extremely fragmented because of increased development activity in all directions surrounding the project site since Fish and Wildlife reviewed this area in 1995. The open space the developer is proposing setting aside in the area is a series of narrow slivers of land, which are extremely fragmented and which do not allow the existing wildlife, including but not limited to, bobcats, deer, raccoons, skunks, and opossums adequate access to water. If development is allowed in this area there will be no significant large area of natural open space left to support these existing native animals. Connectivity of habitats and wildlife corridors are critically important toward maintaining biodiversity.

4) Altering the natural setting in the area of this proposed project is highly controversial. In July, 1999, more than 150 Carlsbad residents attended a very lightly-advertised public scoping meeting on the villages project. Earlier that same year, in another issue to alter the open space in the area where the project is proposed, over 1200 people sent in postcards and letters of protest to the Army Corps of Engineers against the developer's proposed blasting of the walls around Box Canyon.

The National Environmental Policy Act of 1970 requires that an EIS be prepared for any project that is substantially controversial.

5) General Adverse Effects: Runoff from the proposed project will produce polluted discharges that may significantly affect human health, fish, shellfish, wildlife, and any vernal pools. The discharges can have adverse effects on the life stages of aquatic life and other wildlife dependent on the aquatic ecosystems, a series of small streams which flow into San Marcos Creek through the proposed development area. The discharges could also adversely affect fish and wildlife habitat and the capacity of the current wetlands to assimilate nutrients and purify water. Furthermore, the discharges will adversely affect recreation in the area currently used by bicyclists, joggers, and hikers, the aesthetics of the scenic rolling hills and the Box Canyon waterfalls, a series of three waterfalls, the highest being 40 ft. The vegetation in the area there now absorbs the rainwater, but if developed runoff will be a constant threat to the hills. Furthermore, the pollutants from runoff will ultimately make their way into San Marcos Creek and ultimately Batiquitos Lagoon where millions of dollars were spent dredging and cleaning it in the last five years. From there the pollutants go to the ocean to be added to waters already filled with too many pollutants affecting swimmers, surfers, and the local commercial fishing industry.

Furthermore, sec. 230.10 C prohibits discharges that have adverse effects on the aquatic ecosystem diversity, productivity, and stability and all the other items mentioned above. If the proposed development is approved, it would initially impair the aquatic ecosystem with runoff from the initial construction including the blasting and movement of 11,800,000 cubic yards of rock and soil to grade the building sites and later from the residents, pets, and businesses which would reside there.

Considering all these things, the Corps should steer development out of wetland areas and waters of the U.S. This project can easily be constructed away from sensitive areas. Ideally, the Corps should select Alternative 5, the No Build Alternative. At the very least, development should be avoided in the vernal pools areas and along the San Marcos Creek on both sides thereby limiting direct and indirect impacts on the waterways and providing adequate access to water for native animals along this wildlife corridor.

Sincerely,

Patricia C. Bleha
Canyons Network, a Project of the Sierra Club
PMB290
7720B El Camino Real
Carlsbad CA 92009